

HIGH COURT OF UTTARANCHAL AT- NAINITAL.

Writ Petition No. 39(S/B) 2004

Laxman Kotnala S/o Sri R.S. Kotnala,
Branch Manager in main Branch at Dehradun,
Presently working as Officer on Dehradun,
Okhla Khal Branch, Okhla Khal,
District Tehrai Garhwal, ... Petitioner.
Vs.

Chairman, Ganga Yamuna Gramin Bankm
Zila Parishad Bhawan,
Gandhi Road, Dehradun. Respondent.

Sri Rakesh Thapliyal, Ad. for the petitioner,
None for the respondent.

Dated: March 4, 2004:

Hon'ble M.M. Ghildiyal, J.
Hon'ble Rajesh Tandon, J.

Heard Sri Rakesh Thapaliyal, learned counsel for the petitioner and none for the respondents.

This writ petition has been filed by the petitioner for the issue of a writ, order or direction in the nature of certiorari quashing the impugned order dated 17.01.2004 passed by the respondent transferring the petitioner from Okhla Khal Branch to Bacheli Khal Branch. Further with a prayer to issue of a writ, order of direction in the nature of mandamus directing to the respondent to take decision with regard to the posting of the petitioner either at Prem Nagra Branch or in main branch as Branch Manager after taking into consideration the earlier orders dated 29.07.2002 and 12.07.2003.

Brief facts giving rise to the present writ petition are that the petitioner was recruited in 1986 in the Bank and was posted in the remote branches of hill areas and ultimately on 16.07.2002 the petitioner was transferred to Premnagar branch of District Dehradun. In the meantime one Sri P.K. Sharma has filed a writ petition no. 874 (S/B)2002 in which on 18th of July, 2002 order of maintaining status-quo was passed, therefore the petitioner could not join at Premnagar Branch. On 29th July 2002 the respondent directed the petitioner to join in the main branch as Branch Manager at Dehradun.

The petitioner has submitted that in pursuance to the aforesaid order dated 29th July 2003, the petitioner has joined as Branch Manager in main branch, Dehradun.

In paragraph-7 of the writ petition it has been stated that by another officer order dated 12th July 2003, the petitioner was sent on deputation as an officer in Okhala Khal Branch.

The grievance of the petitioner is that he was on deputation and, as such, there was no occasion to transfer the petitioner from Okhala Khal branch to Bacheli Khal branch, therefore the petitioner should have been sent to his original place of posting in the main branch at Dehradun where he was working earlier.

Since by the present writ petition the petitioner has challenged the transfer order, in view of the judgment of the Apex Court in *Shilpa Bose & others v. State of Bihar & others* reported in AIR 1991 Supreme Court 532 the transfer orders are not amenable to writ jurisdiction under Article 226 of the Constitution of India, it is not possible to interfere with the order of transfer. The observations of the Apex Court are quoted below:-

“In our opinion, the courts should not interfere with the transfer order which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the Department. If the Courts continue to interfere with day-to-day transfer orders issued by the government and its subordinate authorities, there will be complete chaos in the administration which should not be conducive to public interest. The High Court overlooked these aspects in interfering with the transfer orders.”

Transfer order having been passed in the public interest, no interference under Article 226 of the Constitution of India can be made.

However, in view of the facts and circumstances that the petitioner was sent on deputation and his grievance is that he should have been sent on his original place of posting at main branch at Dehradun where he was earlier posted at Branch Manager, it will be in the interest of justice that if the petitioner files representation before the authority concerned, the authority concerned shall dispose of the same in accordance with law within a period of one month from the date of filing of the certified copy of this order. The impugned transfer order shall remain in abeyance for two months from today.

With the aforesaid observations, the writ petition is disposed of finally.

(Rajesh Tandon J.)

(M.M. Ghildiyal J.)

March 4, 2004:

NCM: